IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO.494 OF 2006

Union of India — Petitioner
vs.
M/s.Prashant Raj and Co. — Respondents

Mr.Sureshkumar for the petitioner.

Mr.Udayshankar Samudrala for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 16th March 2007

ORAL JUDGMENT:.

The petitioner has challenged this award only on the ground of grant of 8% interest in reference to claim nos.6 and 9 as the respondents were not entitled for any interest. No other points raised. The Arbitral Tribunal, after considering the submission made by the parties, has granted 8% rate of interest instead of 18% p.a. as was claimed by the respondents.

2. The learned counsel appearing for the petitioner basically contended that revised clauses 63 and 64 of the GCC (General Conditions of Contracts) was sent to the respondents vide letter dated 20.10.1997. The parties have, based on the revised clauses, appointed an Arbitrator and proceeded accordingly. The counter claim was also filed as per the revised clause 64 of GCC. As per clause 64(5) no interest is payable and therefore

the grant of interest at the rate of 8% per annum is unsustainable.

3. Admittedly, when the basic contract in question entered into between the parties which was dated 30.4.1996. The period of completion of work was 6 months i.e. 29.10.1996. The final termination notice was on 11.3.1997. There was no such prohibition clause like 64(5) introduced in the contract. The petitioner, only after the dispute arose, intimated the said revised clause to the respondents in view of directive dated 5.8.1997. Therefore, respondent is not entitled to claim benefit of this amended clause. The contract was terminated prior to the introduction of this prohibition clause of grant of interest. The tribunal, based on the Arbitration Act, 1996, can pass an appropriate order while granting the rate of interest. This clause, in the facts and circumstances of the case, cannot restrain or prohibit the Tribunal to grant the interest, in accordance with law.

4. The petitioner, while resisting the claim nos.6 and 9 through their reply also no-where specifically raised this issue about the prohibition of grant of interest. The Arbitral Tribunal by a majority, in the facts and circumstances of the case, backed up by the reason, awarded the interest at the rate of 8% p.a. though it

was claimed at the rate of 18% p.a. The Apex Court in State of **Rajasthan v. M/s.Nav Bharat Construction Co., AIR 2002 SC 258**, while considering the grant of interest observed that the parties, if they fail to raise appropriate objection before the Arbitrator based on the clause of prohibition of grant of interest, cannot be allowed to raise such issue at the later stage.

5. In the present case, even on the merits of the matter, the grant of interest cannot be said to have beyond the main contract/agreement and the settled principle of law. The Apex Court **in Alok Shanker Pandey v. Union of India & ors., 2007 AIR SCW 1233** has observed that there is no hard and fast rule about how much interest should be granted. It all depends on the facts & circumstances of each case : "Interest is not a penalty or punishment at all, but is is the normal accretion on capital". The Tribunal has not committed any error apparent on the face of the record. There is no illegality in awarding interest in question.

6. In view of this, the present petition is dismissed.

No costs.

[ANOOP V. MOHTA,J.]